

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

STATE OF MISSOURI, ex rel.)
JEREMIAH W. (JAY) NIXON)
Attorney General,)
)
Plaintiff,)

v.)

Case No. _____

CONSUMER PROMOTIONS, INC.,)
A Missouri Corporation;)

JAMES P. RIGSBY,)
A Missouri resident,)
In his individual and official)
capacities;)

**PETITION FOR INJUNCTION,
RESTITUTION, CIVIL
PENALTIES, AND OTHER
RELIEF**

JEFF CRISWELL,)
A Missouri resident,)
In his individual and official)
capacities;)

THE CONSUMERS TRUST;)

RICHARD CAPLAN,)
In his official capacity as Trustee)
and in his individual capacity;)

WESLEY HARRISON,)
In his official capacity as Trustee)
and in his individual capacity;)

DENNIS BONLEY,)
In his official capacity as Trustee)
and in his individual capacity;)

ANDREW DAVIS,)
In his official capacity as Trustee)
and in his individual capacity;)

ADRIAN ROMAN,)
Sole shareholder)
of Eurofinance S.A.;)

EUROFINANCE S.A.,)
A British Virgin Islands Company;)
))
ROBIN M. WERTHEIMER,)
A New York resident,)
In her official capacity)
as Trust Administrator and)
in her individual capacity;)
))
and)
))
AARON J. RACINE,)
A Kansas resident,)
In his official capacity)
as Trust Administrator and)
in his individual capacity;)
))
Defendants.)
))
Private Process Servers Requested.)
))
SERVICE OF PROCESS:)
Consumer Promotions, Inc.)
Serve: Jeff Criswell)
Registered Agent)
1451 S.W. 150 Highway)
Lee's Summit, MO 64082)
))
James P. Rigsby (Official Capacity))
President, Consumer Promotions,)
Inc.)
660 S.E. Bayberry Lane, Suite 105)
Lee's Summit, MO 64063)
))
James P. Rigsby (Individual)
Capacity))
1510 N. Kurzweil Road)
Raymore, MO 64083)
))
Jeff Criswell (Official Capacity))
Consumer Promotions, Inc.)
660 S.E. Bayberry Lane, Suite 105)
Lee's Summit, MO 64063)

Jeff Criswell (Individual Capacity))
1451 S.W. 150 Highway)
Lee's Summit, MO 64082)
))
The Consumers Trust)
Administration Address)
1001 E. 101st Terrace)
Suite 170)
Kansas City, MO 64131-3368)
))
Richard Caplan)
Caplan Solicitors)
2 Hobbs House)
Harrobian Business Village)
Bessborough Road)
Harrow HA1 3EX)
United Kingdom)
))
Wesley Harrison)
Caplan Solicitors)
2 Hobbs House)
Harrobian Business Village)
Bessborough Road)
Harrow HA1 3EX)
United Kingdom)
))
Dennis Bonley)
Davis Bonley Chartered)
Accountants & Registered Auditors)
Northside House)
Mount Pleasant)
Barnet)
Hertfordshire EN4 9EE)
United Kingdom)
))
Andrew Davis)
Davis Bonley Chartered)
Accountants & Registered Auditors)
Northside House)
Mount Pleasant)
Barnet)
Hertfordshire EN4 9EE)
United Kingdom)

Eurofinance S.A.)
2 Hobbs House)
Harrovian Business Village)
Bessborough Road)
Harrow HA1 3EX)
United Kingdom)
))
Adrian Roman)
2 Hobbs House)
Harrovian Business Village)
Bessborough Road)
Harrow HA1 3EX)
United Kingdom)
))
Robin M. Wertheimer (Official)
Capacity))
225 Broadway, Suite 1201)
New York, NY 10007)
))
Robin M. Wertheimer (Individual)
Capacity))
228 W. 71st Street)
Apartment 7G)
New York, NY 10023)
))
Aaron J. Racine (Official Capacity)))
1001 E. 101st Terrace)
Suite 170)
Kansas City, MO 64131)
))
Aaron J. Racine (Individual)
Capacity))
7144 Springfield)
Prairie Village, KS 66208.)

PETITION FOR INJUNCTION, RESTITUTION, CIVIL PENALTIES,
AND OTHER RELIEF

COMES NOW the State of Missouri as Plaintiff in this action, by and through its Attorney
 General Jeremiah W. (Jay) Nixon, and states as follows:

INTRODUCTION

The Consumers Trust is an English trust that offers and administers the “Cashable Voucher Program” (hereinafter “The Voucher Program”). The Consumers Trust uses a Missouri company, Consumer Promotions, Inc., (hereinafter “Consumer Promotions”) to market the Voucher Program to merchants. The Voucher Program is a promotional program purporting to provide customers of participating merchants the right to recover the face value of a Cashable Voucher (a coupon-like device with a face value typically equal to the amount of the customer’s purchase price) several years following their purchase of merchandise from the merchant, provided the customer complies with the voucher redemption procedures required by The Consumers Trust.

Working hand-in-glove with The Consumers Trust, Consumer Promotions sells the Voucher Program to merchants by representing that consumers will more willingly purchase merchandise and/or pay the full retail price for merchandise offered for sale by those merchants when those consumers are offered a Cashable Voucher through the Voucher Program.

As a result of the Voucher Program and related representations made by Defendants, consumers are induced to purchase merchandise and to pay higher retail prices for such merchandise through the promise of a future refund of the full face value of the voucher. Both The Consumers Trust and Consumer Promotions, acting through the individual Defendants named in this action, and others, use and employ deception, fraud, false pretense, false promise, misrepresentation, unfair practices, and the concealment, suppression, and omission of material facts which have caused substantial injury to both merchants and consumers in Missouri and elsewhere.

I. PARTIES AND PERSONAL JURISDICTION

1. Jeremiah W. (Jay) Nixon is the duly elected, qualified, and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to Chapter 407, RSMo,¹ the Missouri Merchandising Practices Act.

2. This Court has personal jurisdiction over each and every Defendant by virtue of their having transacted business in Missouri, made contracts in Missouri, purposefully advertised in Missouri, offered the Cashable Voucher Program in Missouri, and by virtue of their being agents and alter egos of each other, being members of a single economic entity or common scheme and enterprise, and other acts yet to be discovered.

Consumer Promotions, Inc. and Defendants Rigsby and Criswell

3. Consumer Promotions, Inc. is a corporation formed under the laws of Missouri and registered with the Missouri Secretary of State, with its principal place of business in Jackson County at 660 S.E. Bayberry Lane, Suite 105, Lee's Summit, Missouri, 64063.

4. Personal jurisdiction over Defendant Consumer Promotions, Inc. is proper where Consumer Promotions, Inc. is a Missouri corporation and has transacted business and entered into contracts in Missouri relating to the Cashable Voucher Program.

5. James P. Rigsby is a natural person and the president, secretary, and director of the board for Consumer Promotions, Inc. Rigsby is instrumental to the operation and control of Consumer Promotions, Inc. and to the promotion, marketing, and merchant contact and training for the Cashable Voucher Program of The Consumers Trust. Rigsby resides in Cass County, Missouri

¹All references unless otherwise noted are to Missouri Revised Statutes 2000.

at 1510 N. Kurzweil Road, Raymore, Missouri, 64083. Rigsby is being sued in his official and individual capacities for violations of the Missouri Merchandising Practices Act.

6. Jeff Criswell is a natural person who is instrumental to the operation and control of Consumer Promotions, Inc. and to the promotion, marketing, and merchant contact and training for the Cashable Voucher Program of The Consumers Trust. Criswell resides in Jackson County, Missouri, at 1451 S.W. 150 Highway, Lee's Summit, Missouri, 64082. Criswell is being sued in his official and individual capacities for violations of the Missouri Merchandising Practices Act.

7. Personal jurisdiction over Defendants Rigsby and Criswell is proper where both are Missouri residents and have transacted business and entered into contracts in Missouri relating to the Cashable Voucher Program.

The Consumers Trust and Its Administrators and Trustees

8. The Consumers Trust is an irrevocable trust created under the laws of England and Wales, with a Missouri "Administration Address" located in Jackson County at 1001 E. 101st Terrace, Suite 170, Kansas City, Missouri, 64131-3368.

9. Personal jurisdiction is proper over The Consumers Trust where it offers and administers the Cashable Voucher Program through Missouri merchants and to Missouri consumers and thereby transacts business in Missouri. The Consumers Trust has also entered into contracts in the state of Missouri and currently maintains its trust administration office in Missouri.

10. Robin Wertheimer is a natural person and was the Administrator for The Consumers Trust in the United States from an exact date unknown until approximately April, 2004, at the Administration Address located at 225 Broadway, New York, New York, 10007. Wertheimer is a New York attorney with the law firm of Alexander and Ash, and resides at 228 W. 71st Street,

Apartment 7G, New York, New York, 10023. Wertheimer is being sued in her official capacity as Administrator for The Consumers Trust and in her individual capacity for violations of the Missouri Merchandising Practices Act.

11. Personal jurisdiction over Defendant Wertheimer is proper where she has transacted business and entered into contracts in Missouri relating to the Cashable Voucher Program. Additionally, Wertheimer made voucher claim determinations for Missouri residents, communicated directly with Missouri residents and merchants, and generally administered the Cashable Voucher Program's operation in Missouri.

12. Aaron J. Racine is a natural person and the Administrator for The Consumers Trust in the United States from at least April, 2004, at the Administration Address located at 1001 E. 101st Terrace, Suite 170, Kansas City, Missouri, 64131-3368. Racine is an attorney with the Kansas City law firm of Monaco, Sanders, Gotfredson, Racine & Barber, L.C., located at 1001 E. 101st Terrace, Suite 170, Kansas City, Missouri, 64131-3368. Racine resides at 7144 Springfield, Prairie Village, Kansas 66208. Racine is being sued in his official capacity as Administrator for The Consumers Trust and in his individual capacity for violations of the Missouri Merchandising Practices Act.

13. Personal jurisdiction over Defendant Racine is proper where he, as Administrator for the Cashable Voucher Program, has transacted business and entered into contracts in Missouri relating to the Cashable Voucher Program at the Missouri Administration Address for the Program. Additionally, Racine made voucher claim determinations for Missouri residents, communicated directly with Missouri residents and merchants, and generally administered the Cashable Voucher Program's operation in Missouri.

14. The trustees of The Consumers Trust are four natural persons, all named Defendants herein: Richard Caplan, Wesley Harrison, Dennis Bonley, and Andrew Davis.

15. Richard Caplan, a trustee for The Consumers Trust, is a lawyer/solicitor with the firm Caplan Solicitors, 2 Hobbs House, Harrovian Business Village, Bessborough Road, Harrow, HA1 3EX, United Kingdom.

16. Wesley Harrison, a trustee for The Consumers Trust, is a lawyer/solicitor with the firm Caplan Solicitors, 2 Hobbs House, Harrovian Business Village, Bessborough Road, Harrow, HA1 3EX, United Kingdom.

17. Dennis Bonley, a trustee for The Consumers Trust, is an accountant with the firm Davis Bonley Chartered Accountants & Registered Auditors, Northside House, Mount Pleasant, Barnet, Hertfordshire, EN4 9EE, United Kingdom.

18. Andrew Davis, a trustee for The Consumers Trust, is an accountant with the firm Davis Bonley Chartered Accountants & Registered Auditors, Northside House, Mount Pleasant, Barnet, Hertfordshire, EN4 9EE, United Kingdom.

19. Richard Caplan, Wesley Harrison, Dennis Bonley, and Andrew Davis are being sued in their official capacities as trustees and in their individual capacities for violations of the Missouri Merchandising Practices Act.

20. Personal jurisdiction is proper over Defendants Caplan, Harrison, Bonley, and Davis where they are the Trustees of The Consumers Trust. Furthermore, they have transacted business in Missouri relating to the Cashable Voucher Program. Additionally, Caplan, Harrison, Bonley, and Davis made voucher claim determinations for Missouri residents, communicated directly with

Consumer Promotions, Inc. and the Missouri Administration office of The Consumers Trust to oversee, administer, and direct the Cashable Voucher Program's operation in Missouri.

Eurofinance, SA and Adrian Roman

21. Eurofinance SA is the trust settlor of The Consumers Trust and is a British Virgin Islands company doing business at 2 Hobbs House, Harrovian Business Village, Bessborough Road, Harrow, HA1 3EX, United Kingdom. Eurofinance SA is the owner of the Cashable Voucher Program.

22. Personal jurisdiction over Defendant Eurofinance SA is proper where it has transacted business and entered into contracts in Missouri relating to the Cashable Voucher Program, specifically entering into contracts with Consumer Promotions, Inc. to market the Program in the United States.

23. Adrian Roman, a natural person, is the sole proprietor of Eurofinance SA (settlor of The Consumers Trust), consultant to The Consumers Trust and originator of the Cashable Voucher Program. Adrian Roman is being sued in his official and individual capacities for violations of the Missouri Merchandising Practices Act.

24. Personal jurisdiction over Defendant Roman is proper where he has transacted business and entered into contracts in Missouri relating to the Cashable Voucher Program, specifically entering into contracts with Consumer Promotions, Inc. to market the Program in the United States.

II. SUBJECT MATTER JURISDICTION AND VENUE

25. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 25 as if fully set forth herein.

26. The Circuit Court has subject matter jurisdiction of this action pursuant to § 407.100 which provides, in part:

- (1) Whenever it appears to the attorney general that a person has engaged in, is engaging in or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitation, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

27. Furthermore, the current Cashable Voucher Program Sample Voucher provided to consumers and the Merchant Agreement entered into by The Consumers Trust, Consumer Promotions, Inc., and the merchant, specifically declare that the construction, validity, interpretation and performance of all terms of the Cashable Voucher program “shall be exclusively subject to the jurisdiction of the courts of the State of Missouri.” See Exhibit “A” (Merchant Agreement and Sample Cashable Voucher) attached hereto and incorporated herein by reference.

28. Pursuant to § 407.100, venue is proper in the Circuit Court of Jackson County, Missouri, because the principal place of business for several Defendants is Jackson County, Kansas City Division, because at least one Defendant resides in Jackson County, Kansas City Division, and because some of the violations of § 407.020 occurred in Jackson County.

III. STATEMENT OF FACTS

A. MERCHANTS

29. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 28 as if fully set forth herein.

30. Consumer Promotions, individual Defendants Rigsby, and Criswell, and their agents and employees solicit merchants in Missouri and elsewhere across the United States to participate in the Cashable Voucher Program.

31. The Consumers Trust administers the Cashable Vouchers Program. Defendants represent that The Consumers Trust exists for the sole purpose of administering the Cashable Voucher Program, carrying on no other business, and is exclusively controlled and administered by “insured lawyer and accountant trustees of The Consumers Trust.” See Exhibit “B” (Brochure) attached hereto and incorporated herein by reference.

32. Defendant Eurofinance, SA, the settlor of The Consumers Trust contracts with Defendant Consumer Promotions to provide marketing services for the Cashable Voucher Program in the United States.

33. The Voucher Program is offered as a promotional tool for merchants to increase their sales of merchandise and their profits. It has been marketed to sellers of a wide variety of merchandise including, but not limited to, pools and spas, jewelry, water softeners, furniture, timeshare interests, orthodontic services, and even school busses. Based on Plaintiff’s information and belief, the merchandise offered for sale through this promotional program has ranged in price from several hundred dollars to many thousands of dollars. The Vouchers issued by The Consumers Trust bear face values up to twenty thousand dollars.

34. Consumer Promotions, individual Defendants Rigsby, and Criswell, and their agents and employees, promote the Voucher Program to merchants through in-person presentations and the use of promotional brochures and other materials in an effort to induce merchants to enter a marketing agreement with Consumer Promotions and The Consumers Trust. Exhibit “B” is one such promotional brochure used in this effort.

35. The Voucher Program is represented to merchants as offering an inducement to consumers to purchase merchandise from the participating merchant and/or to pay the merchant’s

full retail price for that merchandise in exchange for The Consumers Trust cashable voucher which, purportedly, that the consumer can submit after three years to the Consumers Trust to claim the full face value of the voucher (most typically equal to the price of the merchandise being purchased), thereby recouping the cost of the consumer's purchase.

36. In marketing materials, Defendants have represented that “[i]t has been consistently shown that consumers are willing to pay full retail for the opportunity to get all their money back. In fact, we have seen merchants in almost every sector not only achieve a higher retail price, but double their sales volume.” Thus, the voucher program is promoted to merchants as means for merchants to increase sales and gross margins. Thus, according to Defendants, the Voucher Program offers consumers the incentive to “buy today.” See Exhibit “B.”

37. Consumer Promotions, Rigsby and Criswell and their agents and employees provide on-going training and instruction to merchants in the use of the Cashable Voucher Program.

38. As described more fully below, merchants are solicited to enter into agreements with The Consumers Trust and Consumer Promotions that require the merchant to regularly pay to The Consumers Trust 15% of revenues from the sale of any merchandise covered by the Voucher Program.

39. Merchants in more than 40 States have participated in the Voucher Program, and currently merchants in more than 30 States continue to participate today.

40. Based on Plaintiff's information and belief, Cashable Vouchers have been provided by participating merchants to many thousands of consumers in Missouri and across the United States. More than \$24 million has been paid by those participating merchants to The Consumers Trust -- representing approximately 15% of the face value of the Cashable Vouchers issued as a

result of sales of the covered merchandise. Such funds have been paid by merchants to The Consumers Trust for the benefit of consumers who may later seek to redeem the Cashable Vouchers. Accordingly, Plaintiff estimates that more than \$162 million in Cashable Vouchers have been issued by The Consumers Trust through merchandise sales within the United States.

The Merchant Agreement

41. To participate in the Cashable Voucher Program, merchants are required to enter into a “Merchant Agreement” between the merchant, Consumer Promotions, and The Consumers Trust. See Exhibit “A.”

42. Under the terms of the Merchant Agreement, merchants agree to pay to The Consumers Trust 15% of the face value of each voucher provided to a consumer and to make those payments on a weekly basis for all sales of merchandise covered by the Merchant Agreement.

43. The Merchant Agreement sets forth numerous other conditions and obligations placed on participating merchants, including the following:

- A. Merchants must provide a Cashable Voucher for “each and every sale, rental, leasing or finance transaction” of the merchandise covered by the Merchant Agreement and must make payments to The Consumers Trust in an amount equal to 15% of the revenue from each of those covered transactions.
- B. If a merchant ceases providing Cashable Vouchers and paying the requisite 15% portion of the transaction price to The Consumers Trust, “[a]ll vouchers issued by the merchants shall be and become null and void and unenforceable against The Trust.”
- C. Merchants are subject to periodic “audits” by Consumer Promotions and The Consumers Trust to ensure that they have complied with the above provision and payment requirements.
- D. Merchants cannot have any direct communication about the Voucher Program with customers to whom they have provided Defendants’ Cashable Vouchers until *after* all of the vouchers that merchant has provided have passed their expiration date or can no longer be redeemed by the customer.

- E. Merchants, likewise, cannot allow or encourage any *other* person or organization to communicate about the Voucher Program with customers to whom they have provided Defendants' Cashable Vouchers.
- F. Merchants cannot assist any customers in making claims for payment of their Cashable Vouchers.
- G. If a merchant engaged in any of the above-described prohibited communications or activities, any subsequent claim by consumers holding Cashable Vouchers provided by that merchant will be rendered invalid by the Defendants.

44. The Merchant Agreement also includes and incorporates a Sample Cashable Voucher ("Sample Voucher") which contains additional terms, including the following terms especially pertinent to merchants:

- A. "[The Consumers Trust] is exclusively responsible for payment to you [consumer-voucher holder]. The merchant has no such obligation or responsibility to you."
- B. "The merchant has entered into a promotion to issue vouchers to their customers and has agreed to make payments to use for their issue (Merchant Payments)."
- C. "From merchant payments received against vouchers issued in the same week, a series of no-risk deposits are made in local bank accounts established by the Trust ('weekly fund') the full returns from which (capital and interest) are used exclusively to pay validly claiming voucher holders on maturity or prior to maturity as detailed below ('payment')."
- C. "Maturity occurs when the sums accumulated from merchant payments received by the Trust against vouchers agreed to be issued by merchants in the same week equals the amount required to make payment on those vouchers whose holder(s) have complied with the terms and conditions herein."
- D. "There are circumstances where we will not accept or process a claim, which are namely:

.

(B) If the merchant fails to issue vouchers or make payments to us."
- E. The Sample Cashable Voucher also designates The Consumers Trust as the exclusive decision maker in all decisions relating to the voucher and its redemption.

45. The terms set forth in both the Merchant Agreement and the incorporated Sample Voucher are in small print as depicted by Exhibit “A.”

46. The terms of the Sample Voucher and the Merchant Agreement, along with other representations made by Defendants, mislead merchants to believe that the merchants’ weekly payments will be deposited into separate accounts delineated by the week of purchase and held in trust for the future benefit of the consumers to whom they sold the covered merchandise during that week.

47. The arrangement by which each week’s deposits are held as the source for future claims arising from vouchers issued during that week misleads merchants to believe that such monies are set aside and held in trust for the benefit of paying those claims and are reasonably expected to be adequate to meet the representation that vouchers can be redeemed for face value after 36 months. Future deposits in future weeks are similarly represented as being set aside for the benefit of those future voucher claimants.

48. The terms of the Merchant Agreement, and other representations by Defendants, mislead merchants to believe that the merchants’ weekly payments will *remain* on deposit in The Consumers Trust’s trust account for the future benefit of the consumers to whom they sold the covered merchandise during that week.

49. Consumer Promotions, Defendants Rigsby and Criswell, and their agents and employees, also represent to merchants that *all* of the money sent by merchants to The Consumers Trust would be set aside for payment of the consumers’ claims.

50. Consumer Promotions, through its agents and employees, have represented to merchants that the moneys paid by merchants to The Consumers Trust are insured, thereby implying

that in the event either The Consumers Trust or the merchant go out of business the Cashable Vouchers will still be fully paid.

51. Consumer Promotions, through its agents and employees, have represented to merchants that The Consumers Trust is lenient and reasonable in accepting as valid those claims that are submitted within the period of time a customer may submit a claim. Accordingly, merchants are misled to believe that a consumer will likely succeed in receiving the face value of their voucher if they simply remember to submit their claim at the right time.

52. Merchants are not told about, and fail to comprehend the significance of, the requirement imposed upon them to provide Defendants' Cashable Voucher and immediately remit 15% of the purchase price for every sale of covered merchandise. In particular, many merchants, if not all merchants, do not know or understand that these requirements may be used by The Consumers Trust to void *all* vouchers they have ever provided to customers, including those provided that were fully and timely paid by the merchant, so that *any failure whatsoever* by the merchant can jeopardize the rights of all customers of that merchant to ever claim the value of their vouchers.

Administration of The Consumers Trust Accounts

53. Payments made to The Consumers Trust by merchants within the United States are deposited in an account held by The Consumers Trust at the Blue Ridge Bank and Trust Co. in Kansas City, Missouri.

54. Since at least October, 2001, all monies paid by participating merchants have been initially placed into a single account: a non-interest-bearing business account held under the name The Consumers Trust (hereinafter "Trust Account"). Since that date, these merchant payments have

exceeded \$24 million. Contrary to representations, The Consumers Trust and its Trust Administrators have *not* deposited merchant payments into *separate* trust accounts delineated by week of purchase. Merchants' weekly payments are not segregated by week of voucher issuance or in any other discernable manner.

55. Moreover, the monies paid by the merchants to The Consumers Trust have *not* been maintained intact in the above-referenced business account or in any other account: Since October, 2001, more than \$14 million has been withdrawn from The Consumers Trust business account and wired or deposited into unrelated accounts, several of which appear connected to the various individual Defendants named in this action. Included within that \$14 million is nearly \$9 million that has been transferred to overseas accounts in Morocco and the United Kingdom. Only 40% of the \$24 million paid by merchants has remained in an account controlled by The Consumers Trust: \$9.8 million has been deposited into an account entitled Caplans Solicitors Nominees for the Consumers Trust, also located at the Blue Ridge Bank and Trust. Accordingly, the funds paid by merchants to The Consumers Trust upon their providing Cashable Vouchers to consumers have certainly *not* been used exclusively to pay claims of voucher holders.

56. Plaintiff has been unable to confirm the existence of any insurance covering the either of The Consumers Trust accounts at Blue Ridge Bank and Trust or the future claims-payment obligations of The Consumers Trust for the benefit of future consumer claimants. At best, Defendant Trustees may be covered by professional liability insurance.

57. Thus, only approximately 40% of the merchants' payments has been retained in The Consumers Trust's account for the payment of claims by the consumers holding Cashable Vouchers, while approximately 60% of the merchant payments received by The Consumers Trust have been

removed and wired to accounts in foreign banks and to other domestic accounts controlled by the Defendants and others.

The Threat of and Use of Audits

58. Defendants have utilized the merchant's obligation to submit to an audit to ascertain whether a merchant has provided Defendants' Cashable Vouchers to consumers in connection with all sales of the designated merchandise and has paid Defendants the requisite payments of 15% of the face value of the vouchers provided to those consumers. Defendants have used these audits to justify denial of a claim later submitted by a consumer or to encourage consumers to contact a merchant to persuade the merchant to meet Defendants' demands of on-going provision of vouchers and concomitant payments to the Defendants.

59. The conduct of Consumer Promotions and The Consumers Trust and all Defendants in the marketing, sale, and administration of the Cashable Voucher Program constitutes the act, use or employment of deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and the concealment, suppression, or omission of material facts in violation of § 407.020.1.

60. Merchants have suffered substantial injury as a result of Defendants' violations of the Missouri Merchandising Practices Act.

B. CONSUMERS

61. Plaintiff hereby incorporates by reference all of the allegations contained in paragraphs 1 through 60 as if fully set forth herein.

62. As described above, the Cashable Voucher Program is marketed directly to merchants by Defendants as a promotional device for inducing consumers to make purchases of merchandise and/or to pay full retail price for merchandise with Defendants' assurance that consumers will have

the opportunity to redeem the voucher for its face value in three years. Participating merchants are then generally required by their Merchant Agreement to provide a copy of the Sample Voucher to customers purchasing the covered merchandise.

The Sample Voucher

63. Pursuant to the direction of The Consumers Trust and Consumer Promotions, merchants provide consumers with a copy of the Sample Cashable Voucher. Though varying from time to time, the Sample Voucher is highly similar to the Sample Voucher attached to and incorporated within the Merchant Agreement and attached hereto as Exhibit “A.”

64. One side of the Sample Voucher is entitled “A Gesture of Thanks” and depicts fourteen people who are represented as having “validly claimed and received all of their money back” through the Cashable Voucher program offered by The Consumers Trust.

65. Based on Plaintiff’s information and belief, *none* of the fourteen people depicted on the Sample Voucher are participants in the Cashable Voucher Program; they may have recovered funds through earlier programs offered by the Defendants, including programs conducted in Europe.

66. Above the depiction of consumers who purportedly redeemed their vouchers, the Sample Voucher offers consumers the following information about Defendants’ Voucher Program:

How does the offer work?

Your merchant has agreed to pay a fee, so that you can be presented with a live Cashable Voucher and have the opportunity of claiming cash in approximately 3 years time.

How is that possible?

The Cashable Voucher is a financial memory test or challenge and we know from experience that a very high percentage of vouchers will never be redeemed. People forget, lose their vouchers or simply fail to claim validly for any number of reasons. In effect, the voucher holders who do not claim validly help pay for those that do. The important thing is that each of the steps appearing on the reverse side of this leaflet must be satisfied for a valid claim to exist - will you remember?

67. Thus, Defendants anticipate that most consumers will *not* remember to file a claim or that the claim they do file will not be valid. Accordingly, the Voucher Program is represented as being based on an expectation by Defendants that many consumers will either forget to redeem their cashable voucher, or will do so incorrectly and not be entitled to payment.

68. The other side of the Sample Voucher states the “Terms and Conditions of Agreement.”

69. The “Terms and Conditions of Agreement” are printed in all capital letters, with the font set at approximately 7 point in Arial Narrow (7 POINT IN ARIAL NARROW).

70. The capitalization of the letters, the size of the font, and the terms and syntax used make the “Terms and Conditions of Agreement” inconspicuous and difficult for consumers to read and comprehend.

71. The Sample Voucher provided to consumers contains the terms described in Paragraph 44 above, but set forth in approximately 7 point Arial Narrow type so they appear to consumers as follows:

THE MERCHANT HAS ENTERED INTO A PROMOTION TO ISSUE VOUCHERS TO THEIR CUSTOMERS AND HAS AGREED TO MAKE PAYMENTS TO US FOR THEIR ISSUE (“MERCHANT PAYMENTS”). FROM MERCHANT PAYMENTS RECEIVED AGAINST VOUCHERS ISSUED IN THE SAME WEEK, A SERIES OF NO-RISK DEPOSITS ARE MADE IN LOCAL BANK ACCOUNTS ESTABLISHED BY THE TRUST (“WEEKLY FUND”) THE FULL RETURNS FROM WHICH (CAPITAL AND INTEREST) ARE USED EXCLUSIVELY TO PAY VALIDLY CLAIMING VOUCHER HOLDERS ON MATURITY OR PRIOR TO MATURITY AS DETAILED BELOW (“PAYMENT”). MATURITY OCCURS WHEN THE SUMS ACCUMULATED FROM MERCHANT PAYMENTS RECEIVED BY THE TRUST AGAINST VOUCHERS AGREED TO BE ISSUED BY MERCHANTS IN THE SAME WEEK EQUALS THE AMOUNT REQUIRED TO MAKE PAYMENT ON THOSE VOUCHERS WHOSE HOLDER(S) HAVE COMPLIED WITH THE TERMS AND CONDITIONS HEREIN.

72. However, as set forth in Paragraphs 54 and 55 above, the full amount of funds paid by merchants to The Consumers Trust when vouchers are provided is not used “exclusively” to pay validly claiming voucher holders, and the payments of merchants are not deposited in separate “weekly funds” or other accounts delineated by week of purchase, but are, instead, deposited into a single account and then further dispersed.

Claims Filing Procedure and Treatment of Claims

73. The Sample Voucher also provides the exclusive instructions to consumers as to how, to submit a claim to redeem their cashable voucher from The Consumers Trust. The terms set forth on the Sample Voucher contained with Exhibit “A,” set forth in approximately 7 point Arial Narrow type, appear as follows:

WITHIN SEVEN DAYS AFTER THE THIRD ANNIVERSARY OF THE ISSUE DATE SHOWN ON THE VOUCHER ("ISSUE DATE") YOU MUST SUBMIT A CLAIM BY VISITING THE CONSUMER SECTION OF OUR INTERNET WEBSITE www.cashablevouchers.com ("SITE"). CLICK ON CLAIMS AND COMPLETE AND SUBMIT THE CLAIM FORM. THEN SEND THE ORIGINAL VOUCHER ON WHICH YOU MUST SIGN YOUR NAME AND WRITE THE CLAIM NUMBER OBTAINED THROUGH THE SITE TO THE TRUST AT THE ADMINISTRATION ADDRESS BY CERTIFIED OR REGISTERED MAIL OR BY COURIER ONLY TOGETHER WITH THE ORIGINAL DOCUMENTS LISTED BELOW AND THE COPY DOCUMENTS SPECIFIED IN (AA) BELOW ("CLAIM"). THESE DOCUMENTS WILL BE RETURNED TO YOU BY SECURE MAIL WITHIN 28 DAYS ("SUBMITTED DOCUMENTS").
THE INVOICE, RECEIPT OR RENTAL/LEASE/FINANCE AGREEMENT OBTAINED AGAINST YOUR ACQUISITION OF THE ITEM(S).
THIRD PARTY WRITTEN PROOF OF PAYMENT OF THE ITEM(S) OR PAYMENT TO DATE FOR RENTAL/LEASE/FINANCE OF THE ITEM(S) IN THE FORM OF RELEVANT BANK OR CREDIT CARD STATEMENT(S) OR IF PAID BY CASH A VERIFIABLE RECEIPT(S). (AND IN THE CASE OF TIMESHARE ADDITIONAL PROOF OF PAYMENT TO DATE OF ALL OR ANY DUE ANNUAL MAINTENANCE CHARGES)
YOUR CERTIFIED OR REGISTERED MAIL POSTAL RECEIPT OR YOUR COURIER RECEIPT RELATING TO CLAIM WHICH MUST SHOW CLEAR ORIGINAL DATE MARKING BY THE ISSUER
(AA) A CERTIFIED COPY OF YOUR BIRTH CERTIFICATE OR A NOTARY CERTIFIED COPY OF YOUR DRIVERS LICENSE OR A NOTARY CERTIFIED COPY OF YOUR PASSPORT TO PROVE YOUR IDENTITY TOGETHER WITH A PHOTOCOPY OF A CURRENT UTILITY BILL TO PROVE YOUR CURRENT ADDRESS DETAILS.

74. The instructions for submitting a valid claim, besides being difficult to read and comprehend, impose burdensome and nonsensical requirements that serve no purpose other than to frustrate a prospective claimant: As described in the Sample Voucher attached as Exhibit “A,” within the seven days following the 36th month after the consumer’s date of purchase, the consumer must visit the website www.cashablevouchers.com, submit a claim form to Cashable Vouchers via the Internet, and obtain a claim number issued during the Internet transaction. The consumer must then send his/her original Cashable Voucher provided by the participating merchant to The Consumers Trust Administrator together with the following documents: The original sales invoice, receipt or rental/lease/finance agreement “obtained against your acquisition of the item(s)” at the time of sale in addition to original “third party written proof of payment” of the merchandise in the form of “relevant bank or credit card statements” or a “verifiable receipt(s)”, a certified copy of the consumer’s birth certificate or a notary certified copy of the consumer’s drivers license or passport, and a photocopy of a current utility bill “to prove your current address details.” Additionally, the consumer must enclose within the submission his/her original certified or registered mail or courier

receipt which “must show clear original date marking by the issuer.” Additionally, in the event the underlying merchandise purchase is a timeshare interest, the consumer must also submit original documentation showing all annual maintenance fees have been paid.

75. Nowhere on the Sample Voucher are the terms “third party written proof of payment,” “relevant bank or credit statement(s),” or “verifiable receipt(s)” defined. It is further unclear how a consumer is to comply with the requirement of enclosing *within* the mailing containing his/her claim documents the consumer’s original certified or registered mail receipt. Moreover, the consumer lacks control over the print quality of the postal or courier’s receipt showing the original date of the mailing. Neither the need for all of these specific documents from the consumer, nor their subsequent use by the Defendants, is disclosed. Finally, any error on the consumer’s part in submitting a claim, on his/her first attempt, is grounds for non-payment of the claim by The Consumers Trust Administrator.

76. The requirements imposed on consumers to submit a “valid” claim are designed to frustrate the successful submission of claims by consumers to whom Cashable Vouchers were issued.

77. The Sample Voucher Terms also set forth, in identically small and difficult to read print as above-quoted terms and conditions, eight grounds for claims to be *rejected* by The Consumers Trust Administrator:

- (A) If the consumer has been reminded, encouraged or assisted to make a claim by any individual, organization, company or reminder service whether profit making or not.
- (B) If the merchant fails to provide vouchers or make payments to The Consumers Trust.
- (C) If (except in the case of exchange) the item was returned or refunded within a period of twelve months from the issue date or if the item was supplied to the consumer other than by or through the merchant.

(D) If the claim time limit has not been strictly complied with and is the postal or courier manner specified above.

(E) If, on first submission, the claim is not made in the manner specified in the voucher.

(F) If the consumer has been provided more than one voucher relating to a single or connected transaction covering his/her purchase, rental or lease of a product(s) or service(s) from or through the merchant or if the vouchers written amount exceeds the maximum written amount stated on the voucher.

(G) If the submitted documents cannot be verified by The Consumers Trust.

(H) If the consumer or any other named holder of the voucher are a director, officer, owner, partner, employee or agent of the merchant or a family member of any of them.

78. The Sample Voucher asserts that The Consumers Trust is “the final arbiter in all matters relating to the voucher and are exclusively responsible for payment to you. The merchant has no such obligation or responsibility to you.”

79. The terms stated on the Sample Voucher expressly prohibit the *consumer* from seeking or receiving any assistance from any others in submitting or remembering to submit a claim, including, but not limited to, the merchant. Moreover, the consumer is not allowed to obtain assistance from a merchant or from The Consumers Trust for any assistance in submitting a claim: “Both the merchant and the Trust are restricted from assisting voucher holders in any way as to the terms of the voucher or the program in writing or otherwise and we will not therefore contact you until after your claim has been submitted and reviewed by us.”

80. The actual Cashable Voucher, also referred to as a “live” voucher, is provided to the consumer when they make their purchase of the covered merchandise; it does not contain any of the above-described “Terms and Conditions.”

81. The terms and conditions for consumers' claim submissions, although varying slightly from time to time, have remained vague and burdensome in their requirements and difficulty of compliance, therefore, creating a significant barrier to consumers attempting to submit timely claims.

Omission, Concealment and Suppression of Materials Facts to Consumers

82. The terms and conditions of the Sample Cashable Voucher represent that The Consumers Trust has estimated that the full face value of issued Vouchers will be accumulated and paid to consumers submitting claims within about 36 months of the consumer's purchase of the underlying merchandise. See Exhibit "A."

83. Defendants do not disclose to consumers any of the statistics they claim to rely upon in representing that consumers' Cashable Vouchers will reach full maturity within 36 months following the consumers' transactions. Thus, consumers do not know the historical basis for Defendants' assertion that the funds available to pay the face value of Cashable Vouchers being claimed will be sufficient. Such information would also inform consumers of their own likelihood of fully redeeming their vouchers. Disclosure of such information would further enable a consumer to more realistically evaluate the likely value of Defendants' promotional program as an incentive to the consumer making the underlying purchase of merchandise under the terms offered by the merchant.

84. The importance of strict compliance of the terms for submitting a valid claim is downplayed by Defendants as consumers are misled to believe that The Consumers Trust Administrator will be lenient and reasonable in accepting as valid those claims submitted within the 7-day claim period. Consumers attempting to redeem their vouchers have had claims declared

invalid by The Consumers Trust Administrators for failure to contain each of enumerated documents or for reasons entirely outside the consumers' own control.

The Failure to Pay Valid Claims

85. Consumers are misled to believe that they will receive the full face value of their voucher three years after their purchase of covered merchandise if they comply with the claim submission terms. Many consumers would not have purchased the particular merchandise, at a particular price or time, or from a particular merchant, but for the incentive of a return of their purchase price as offered by and through Defendants' Voucher Program.

86. However, consumers submitting valid claims within the 7-day claim window have been advised that there are insufficient funds to pay their claims. Consumers have discovered that, 36 months after their purchase, The Consumers Trust will not pay the face value of their Cashable Vouchers. Instead, consumers successfully submitting claims have been offered "alternative" payments of less than half the face value of their Cashable Vouchers. Based upon Plaintiffs information and belief, less than \$200,000 has been paid out to consumers submitting claims on Cashable Vouchers by The Consumers Trust Administrator since October, 2001.

87. To justify the refusal to pay face value of Cashable Vouchers, The Consumers Trust and Defendants Racine and Wertheimer have represented to consumers that the vouchers have not yet "matured" and the inadequacy of funds is the result of merchants failing to continue to pay 15% of their revenues from the sale of all covered products.

88. However, such excuses ignore the fact that more than half of the funds paid into the Trust Account by participating merchants have been removed and diverted to other bank accounts, including accounts located overseas. Moreover, The Consumers Trust and the individual Defendants

involved in its administration and oversight are aware, or have had the on-going ability and responsibility to be aware, of the status of funds in the account during each and every week in which deposits have been made by merchants and the amounts of the corresponding Cashable Vouchers that have been issued by The Consumers Trust. Consumers are typically not advised that their Cashable Voucher has not “matured” until they try to claim payment three years after they purchased the underlying merchandise.

89. Consumers and merchants have suffered substantial injury as a result of Defendants’ violations of the Missouri Merchandising Practices Act.

C. Defendants’ Relationships to One Another and Individual Liability

90. Plaintiff hereby incorporates by reference all of the allegations contained in Paragraphs 1 through 89 as if fully set forth herein.

91. The Consumers Trust is an irrevocable trust established by a series of trust deeds executed through the years.

92. The settlor for The Consumers Trust is Eurofinance, SA.

93. Adrian Roman is the sole proprietor of Eurofinance, consultant to The Consumers Trust and originator of the Cashable Voucher Program.

94. From a date unknown, Eurofinance and/or Adrian Roman has contracted with Consumer Promotions, Rigsby, and Criswell, to provide marketing for the Cashable Voucher Program in the United States, including Missouri.

95. The promotional and training materials used by Consumer Promotions have been and continue to be reviewed and approved by The Consumers Trust and its trustees.

96. Consumer Promotions and representatives of The Consumers Trust “police” the Cashable Voucher Program on behalf of The Consumers Trust. This policing role includes direct oversight and supervision of all aspects of the programs operated and offered in the United States, including Missouri.

97. Consumer Promotions is an agent of Eurofinance.

98. Consumer Promotions is an agent of The Consumers Trust.

99. The current trustees for The Consumers Trust are Richard Caplan and Wesley Harrison (hereinafter “the Lawyer Trustees”), and Dennis Bonley, and Andrew Davis (hereinafter “the Accountant Trustees”).

100. The Consumers Trust exists for the sole purpose of administering the Cashable Voucher Program² marketed and offered in the United States, including Missouri.

101. Robin Wertheimer was the United States administrator of The Consumers Trust from a date unknown until approximately April of 2004.

102. Aaron Racine is the current United States administrator of The Consumers Trust.

103. The administrator of The Consumers Trust makes decisions regarding the vouchers and the voucher claims for the Cashable Voucher Program.

104. The administrator forwards the decisions on the voucher claims to the Accountant Trustees.

105. The Accountant Trustees, upon receipt of the claim decisions of the administrator, make final determinations as to claim validity and as to the amount of money to be paid for each valid claim from the account held in the Blue Ridge Bank and Trust.

²The Cashable Voucher Program is the current incarnation of a promotional scheme first launched in Europe in 1992.

106. Upon a final determination as to claim validity, the Accountant Trustees notify the Lawyer Trustees of the amount of money to be paid for each valid claim.

107. Once they receive notice from the Accountant Trustees, the Lawyer Trustees are responsible for asking the Blue Ridge Bank and Trust to issue cashiers' checks to valid claimants.

108. Each and every Defendant is an agent and alter ego of each other and are members of a single economic entity or common scheme and enterprise.

109. Based on Plaintiff's information and belief, all Defendants have personally benefitted from monies paid to The Consumers Trust by merchants expecting those funds to be available for their customers who later submit claims on Cashable Vouchers.

110. Based on Plaintiff's information and belief, the individual Defendants have controlled and dominated and held ultimate decision-making authority over the activities of the corporate Defendants such that the corporate Defendants have been mere instruments of the individual Defendants and the corporate cloak has been used to defeat public convenience and to perpetrate a fraud.

111. Where the public interest is involved, as in a case brought by the State's chief law enforcement officer to restrain, enjoin, and punish unfair, deceptive marketing practices, and where strict adherence to common law principles of corporate existence and liability would enable the wrongdoers to use the corporate cloak to circumvent the policies of the State's public protection laws, then under the law of "common enterprise," strict adherence to the common law rules of corporate cloaks and forms is not required and is not advisable.

IV. VIOLATIONS OF MISSOURI'S MERCHANDISING PRACTICES ACT

112. Plaintiff hereby incorporates by reference all of the allegations contained in Paragraphs 1 through 111 as if fully set forth herein.

113. Section 407.020 provides, in pertinent part, as follows:

- (1) The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in § 407.452, in or from the State of Missouri, is declared to be an unlawful practice. . . .

114. Section 407.010 provides the following definitions relevant to this action:

- A. The term "advertisement" means "the attempt by publication, dissemination, solicitation, or circulation, or any other means to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise;"
- B. The term "merchandise" means "any objects, wares, goods, commodities, intangibles, real estate or services;"
- C. The term "person" means "any natural person or his legal representative, partnership, firm, for profit or not for profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof;"
- D. The term "sale" means "any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit," and
- E. The terms "trade or commerce" mean "the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms "trade" and "commerce" include any trade or commerce directly or indirectly affecting the people of this state."

115. Pursuant to the authority granted under Section 407.145 the Attorney General has promulgated rules explaining and defining terms used in 407.020 including the following:

A. 15 CSR 60-7.020 provides that “[a] seller shall not make a representation or statement of fact in an advertisement that is false or has the capacity to mislead prospective purchasers.”

B. 15 CSR 60-7.030 provides that “[a] seller shall not omit any material fact in an advertisement.

C. 15 CSR 60-8.010 provides

(1) Unless inconsistent with the definitions provided in Chapter 407, RSMo, the following terms and phrases shall mean:

.....

(B) Consumer shall include any person (as defined in section 407.010.5., RSMo) who purchases, may purchase or is solicited for purchase of merchandise;

.....

(E) Good faith shall mean honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade;

D. 15 CSR 60-8.020 provides

(1) An unfair practice is any practice which-

(A) Either-

1. Offends any public policy as it has been established by the Constitution, statutes or common law of this state, or by the Federal Trade Commission, or its interpretive decisions; or

2. Is unethical, oppressive or unscrupulous; and

(B) Presents a risk of, or causes, substantial injury to consumers.

(2) Proof of deception, fraud, or misrepresentation is not required to prove unfair practices as used in section 407.020.1, RSMo.

E. 15 CSR 60-8.040 provides

(1) It is an unfair practice for any person in connection with the advertisement or sale of merchandise to violate the duty of good faith in solicitation, negotiation and performance, or in any manner fail to act in good faith (see section 400.2-103(1)(b), Restatement, Second, Contracts section 205).

F. 15 CSR 60-8.050 provides

(1) It is an unfair practice for any person in connection with the advertisement or sale of merchandise to use or employ any duress, or undue influence (see section 400.2-103(1)(b), Restatement, Second, Contracts sections 205, 364).

G. 15 CSR 60-8.070 provides

(1) It is an unfair practice for any person in connection with the sale of merchandise to unilaterally breach unambiguous provisions of consumer contracts.

G. 15 CSR 60-8.080 provides:

(1) It is an unfair practice for any person in connection with the sale of merchandise to engage in any unconscionable act or practice, or to use any unconscionable contract or contract term.

(2) It is unconscionable to take advantage of an unequal bargaining position and obtain a contract or term which results in a gross disparity of values exchanged.

H. 15 CSR 60-8.090 provides

(1) It is an unfair practice for any person in connection with the advertisement or sale of merchandise to engage in any method, use or practice which-

(A) Violates state or federal law intended to protect the public; and

(B) Presents a risk of, or causes substantial injury to consumers.

I. 15 CSR 60-9.010 provides

(1) Unless inconsistent with the definitions provided in Chapter 407, RSMo, the following terms and phrases shall mean:

(A) Assertion may be words, conduct or pictorial depiction, and may convey past or present fact, law, value, opinion, intention or other state of mind;

(B) Consumer shall include any person . . . who purchases, may purchase or is solicited for purchase of merchandise; and

(C) Material fact is any fact which a reasonable consumer would likely consider to be important in making a purchasing decision, or which would be likely to induce a person to manifest his/her assent, or which the seller knows would be likely to induce a particular consumer to manifest his/her assent, or which would be likely to induce a reasonable consumer to act, respond or change his/her behavior in any substantial manner.

J. 15 CSR 60-9.020 provides

(1) Deception is any method, act, use, practice, advertisement or solicitation that has the tendency or capacity to mislead, deceive or cheat, or that tends to create a false impression.

(2) Reliance, actual deception, knowledge of deception, intent to mislead or deceive, or any other culpable mental state such as recklessness or negligence, are not elements of deception as used in section 407.020.1, RSMo. Deception may occur in securing the first contact with a consumer and is not cured even though the true facts or nature of the advertisement or offer for sale or subsequently disclosed.

K. 15 CSR 60-9.030 provides

(1) It is deception for any person in an advertisement or sales presentation to use any format which because of its overall appearance has the tendency or capacity to mislead consumers.

L. 15 CSR 60-9.060

(1) False promise is any statement or representation which is false or misleading as to the maker's intention or ability to perform a promise, or likelihood the promise will be performed.

(2) Reliance and injury are not elements of false promise as used in section 407.030.1, RSMo.

M. 15 CSR 60-9.070 provides:

(1) A misrepresentation is an assertion that is not in accord with the facts....

(2) Reliance, knowledge that the assertion is false or misleading, intent to defraud, intent that the consumer rely upon the assertion, or any other culpable mental state such as recklessness or negligence, are not elements of misrepresentation as used in section 407.020.1, RSMo.

N. 15 CSR 60-9.080 provides that:

(1) It is a misrepresentation for any person in connection with the advertisement or sale of merchandise to make an untrue statement of material fact.

O. 15 CSR 60-9.090 provides

(1) It is a misrepresentation for any person in connection with the advertisement or sale of merchandise to omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they are made, not misleading.

P. 15 CSR 60-9.100 provides

(1) It is a misrepresentation for any person in connection with the advertisement or sale of merchandise to make any fraudulent assertion.

(2) An assertion is fraudulent if the person intends his/her assertions to induce a consumer to purchase merchandise, and the person -

(A) Knows or believes that the assertion is not in accord with the facts; or

(B) Knows that he does not have a reasonable basis for his/her assertion....

Q. 15 CSR 60-9-110 provides

(1) Concealment of a material fact is any method, act, use or practice which operates to hide or keep material facts from consumers.

(2) Suppression of a material fact is any method, act, use or practice which is likely to curtail or reduce the ability of consumers to take notice of material facts which are stated.

(3) Omission of a material fact is any failure by a person to disclose material facts known to him/her, or upon reasonable inquiry would be known to him/her.

(4) Reliance and intent that others rely upon such concealment, suppression or omission are not elements of concealment, suppression or omission as used in section 407.020.1, RSMo.

116. Each Defendant acting alone, in their individual and official capacities, and acting in concert with others has engaged in methods, acts, uses and practices of deception, fraud, false pretenses, false promise, misrepresentation, unfair practice, and the concealment, suppression and omission of material facts in connection with the Cashable Voucher Program administered by The Consumers Trust, and promoted and marketed by Consumer Promotions, in violation of § 407.020 and the regulations promulgated thereunder through the following unlawful acts, practices and courses of conduct:

- A. Misleading merchants into participating in the program by falsely promising that the funds paid by merchants into the Trust Account will be retained in that fund for the benefit of consumers seeking to redeem Defendants' vouchers.
- B. Misrepresenting to merchants and to consumers that monies paid by merchants will be used exclusively to pay consumer claims when, in fact, the majority of such funds are not available and are not used for that purpose.
- C. Employing an unfair practice by diverting funds paid by merchants to The Consumers Trust, thereby rendering it less likely that such funds will be available for the payment of consumer claims, which practice is unscrupulous and is likely to cause harm to consumers.
- D. Misleading merchants into participating in the program by falsely representing that funds paid by merchants to The Consumers Trust will be retained in separate accounts, segregated by the week of purchase, so that a sum certain will be set aside for the future benefit of consumers seeking to redeem Defendants' vouchers.
- E. Misrepresenting to merchants and to consumers that monies paid by merchants during the week of their purchase will be retained in a separate, segregated account so that a sum certain remains set aside for payment of consumer claims when, in fact, such funds are not segregated or set aside.
- F. Misleading merchants to believe that customers will have the opportunity to redeem their Cashable Vouchers for full face value upon the passing of 36 months when, in fact, the voucher is likely to be deemed not yet "mature" by The Consumers Trust Administrator due to insufficient funds retained by The Consumers Trust.

- G. Employing deception by portraying persons as having successfully received the face value of Cashable Vouchers in accordance with their terms and conditions when, in fact, such persons have not participated in Defendants' Voucher Program or correctly complied with such terms.
- H. Concealing or suppressing material facts from consumers as to how a consumer must submit a valid claim on a Cashable Voucher by using inconspicuous type, difficult to comprehend phrases and syntax, and vague and undefined terms to state the conditions and requirements for submitting a valid claim.
- I. Concealing or suppressing material facts from merchants that their failure to accurately and timely submit payment to The Consumers Trust for every item of covered merchandise may provide a basis for The Consumers Trust's Administrator to void and refuse to honor each and every voucher issued through that merchant to consumers, including those vouchers for which the merchant timely paid the requisite 15% of sales revenues.
- J. Employing unfair practices by conditioning a consumer's ability to redeem the face value of a Cashable Voucher on terms and conditions that were and remain outside of that consumer's ability to control, or even to have knowledge of, including, but not limited to, the failure of the consumer's Cashable Voucher to adequately "mature" or a merchants' failure to correctly satisfy all terms of the Merchant Agreement, even after the consumer's purchase, which term is unscrupulous and likely to cause harm to consumers.

- K. Employing unfair practices by imposing terms and conditions on a consumer's ability to redeem the cash value of a voucher which are unreasonable, vague, oppressive and which tend to frustrate and avoid a successful claim being made for the cash value of a voucher, which practices are unscrupulous and are likely to cause harm to consumers.
- L. Employing deception by causing consumers to form the impression that they are likely to be able to successfully redeem their voucher after three years when, in fact, very few consumers successfully redeem their vouchers due to the terms and conditions placed on the program by Defendants, which impression materially contributes to the consumer's decision to purchase the underlying merchandise from the merchant.
- M. Omitting to disclose to consumers the material fact that less than 6% of the face value of their Cashable Voucher is actually retained by The Consumers Trust for the purpose of "maturing" and paying future consumers' claims where such fact would be likely considered important to consumers in their assessing both the likelihood of their ultimately making a valid claim and the ability of The Consumers Trust to pay the full face value of their Cashable Voucher.
- N. Omitting to disclose to consumers the estimates of expected consumer claims and payments on Cashable Vouchers based on the statistical analysis or historical experience of The Consumers Trust which underlie its practice of retaining less than 6% of the face value of Cashable Vouchers it issues where such facts and information would be likely considered important by consumers in their assessing both the

likelihood for their ultimately making a valid claim and the ability of The Consumers Trust to pay the full face value of their Cashable Voucher if more than the estimated number of consumers do make valid claims.

- N. Employing unfair practices by imposing upon merchants and consumers the unscrupulous and unethical term of rendering a consumer's voucher unredeemable if, at any time, a merchant reminds, encourages or assists that consumer to make a claim or seek to redeem a voucher, where such term violates public policy and is likely to cause harm to consumers by fostering the consumers' forgetting to make a claim or failing to comply with all of the terms and conditions for a valid claim.
- O. Misleading merchants to believe that the monies they pay to The Consumers Trust will be retained by The Consumers Trust for the future benefit of their customers who redeem their vouchers when, in fact, less than half of the funds paid by the merchants are retained for that purpose.

126. The Missouri Merchandising Practices Act specifically authorizes the Attorney General to bring an action, seeking injunctions, various other equitable remedies, full restitution and civil penalties of up to \$1,000 per separate violation. § 407.100.

127. The Act specifically authorizes the Court to appoint a receiver, who may collect and hold all monies unlawfully obtained, for return to the victims. § 407.105.

128. The Act authorizes the Court to protect funds and accounts of a business charged with violating the Act during the pendency of adjudication to protect against the hiding or removal of those funds and accounts. § 407.100.

129. The conduct of all Defendants, as described above, caused ascertainable loss to consumers, was unlawful, and warrants injunctions, appointment of a receiver, sequestration of funds and accounts, an award of restitution, an award for the costs of investigation and prosecution, and civil penalties for each violation. The Attorney General seeks each of these remedies.

RELIEF

WHEREFORE, Plaintiff requests this Court to issue the following orders:

1. An Order of this Court finding that Defendants have violated the provisions of § 407.020.
2. A preliminary and permanent injunction issued pursuant to § 407.100, prohibiting and enjoining Defendants and their agents, servants, employers, representatives, and other individuals acting at their direction or on their behalf from violating § 407.020 through the use of any of the unlawful, unfair and deceptive acts and practices alleged herein.
3. An Order of this Court requiring Defendants to provide full restitution to all consumers who have been aggrieved by the use of any unlawful, unfair and deceptive acts and practices alleged herein.
4. An Order of this Court awarding the State a civil penalty from Defendants of One Thousand Dollars (\$1,000.00) per violation of § 407.020 that the Court finds to have occurred.
5. An Order of this Court ordering Defendants to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against said Defendant, or such other amount as the Court deems fair and equitable.
6. An Order of this Court requiring the Defendants to pay all court and investigative and prosecution costs of this case.

7. An Order of this Court preserving the funds and accounts of Defendants during the pendency of litigation for purposes of providing the relief sought by the State.
8. An Order of this Court appointing a receiver pursuant to § 407.105 RSMo.
9. Such other or additional relief as the Court deems necessary in this action.

Respectfully Submitted,

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